



## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

March 13, 2008

### **H.R. 5577** **Chemical Facility Anti-Terrorism Act of 2008**

*As introduced by the House of Representatives on March 11, 2008*

#### **SUMMARY**

H.R. 5577 would authorize the appropriation of \$900 million over the 2010-2012 period for the Department of Homeland Security (DHS) to regulate the security of chemical facilities across the United States (that is, facilities where certain types of chemicals are used, stored, manufactured, processed, or distributed). The bill would establish a chemical security office within DHS to carry out the provisions of this legislation, including conducting audits and inspections of the nation's chemical facilities. In addition, CBO estimates that DHS would need funding of \$283 million for fiscal year 2013 to continue to carry out those activities.

Assuming appropriation of the necessary amounts, we estimate that implementing H.R. 5577 would cost about \$1.1 billion over the 2010-2013 period. In addition, enacting the bill could affect direct spending and receipts, but we estimate that any such effects would not be significant.

H.R. 5577 would impose several intergovernmental mandates, as defined in the Unfunded Mandates Reform Act (UMRA), including new requirements on publicly owned chemical facilities as well as preemptions of state and local laws. Based on information from DHS and representatives of publicly owned facilities, CBO estimates that additional costs for those facilities would not be significant. CBO further estimates that the cost of the other intergovernmental mandates (mostly preemptions) in the bill would be small, and therefore, that the total costs to state, local, and tribal governments would not exceed the annual threshold established in UMRA (\$68 million for intergovernmental mandates in 2008, adjusted annually for inflation).

H.R. 5577 also would extend and impose new private-sector mandates, as defined in UMRA, on owners and operators of certain types of chemical facilities. Based on information from industry sources and DHS, CBO expects that the aggregate direct cost of complying with those mandates would likely exceed the annual threshold established in UMRA for

private-sector mandates (\$136 million in 2008, adjusted annually for inflation) in at least one of the first five years the mandates are in effect.

## ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 5577 is shown in the following table. The costs of this legislation fall within budget function 750 (administration of justice).

	By Fiscal Year, in Millions of Dollars					
	2008	2009	2010	2011	2012	2013
<b>CHANGES IN SPENDING SUBJECT TO APPROPRIATION<sup>a</sup></b>						
Estimated Authorization Level <sup>b</sup>	0	0	325	300	275	283
Estimated Outlays	0	0	260	305	280	282

a. In addition to the amounts shown above, enacting H.R. 5577 could affect revenues and direct spending, but CBO estimates that any such effects would not be significant in any year.

b. The authorization levels for 2010 through 2012 are specified by H.R. 5577; CBO estimated the 2013 level.

## BASIS OF ESTIMATE

CBO estimates that implementing H.R. 5577 would cost about \$1.1 billion over the 2010-2013 period, assuming appropriation of the necessary funds. Enacting the bill could affect direct spending and revenues, but we estimate that any effects would be insignificant.

### Spending Subject to Appropriation

For this estimate, CBO assumes that the necessary amounts will be appropriated for each fiscal year and that spending will follow the historical spending patterns for those or similar activities.

H.R. 5577 would authorize the appropriation of \$900 million over the 2010-2012 period for DHS to regulate the security of chemical facilities in the United States. In addition, CBO estimates that implementing the bill would require funding of \$283 million in 2013 for DHS to continue to carry out the bill's activities. We estimated the 2013 level by adjusting the 2012 level for anticipated inflation.

## **Direct Spending and Revenues**

Enacting H.R. 5577 could affect direct spending and receipts because the bill would establish new civil and criminal penalties against owners and operators of chemical facilities and officers or employees of federal, state, or local government agencies who fail to comply with the bill's requirements. Civil fines are recorded as revenues and deposited in the Treasury. Criminal fines are recorded as revenues, then deposited in the Crime Victims Fund, and later spent. CBO expects that any additional revenues and direct spending would not be significant because of the small number of cases affected.

## **ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS**

H.R. 5577 would impose intergovernmental mandates, as defined in UMRA, on owners and operators of chemical facilities, including public entities. The bill also would preempt state, local, and tribal authority. Because some of the requirements on chemical facilities would depend on future actions of DHS, CBO cannot determine their exact costs. However, based on information from DHS and representatives of public entities, CBO estimates that additional costs for public facilities would not be significant. CBO further estimates that the cost of the other intergovernmental mandates in the bill would be small. Therefore, the total costs to state, local, and tribal governments would not exceed the annual threshold established in UMRA (\$68 million for intergovernmental mandates in 2008, adjusted annually for inflation).

## **Requirement for Vulnerability Assessments and Security Plans**

H.R. 5577 would require owners and operators of affected facilities to conduct an assessment of the vulnerability of their facilities, identify the hazards that may result from a substance's release, and develop and implement a security plan to prevent or respond to those releases. H.R. 5577 would further require owners and operators to maintain records at the facility, provide access for DHS officials, require background checks on employees with access to restricted areas, and provide training to employees. Those facilities would be prohibited from firing or otherwise discriminating against an employee who provides information to DHS regarding vulnerabilities at a chemical facility.

Similar activities are required under current law, but those requirements expire in 2009; however, some public entities, such as drinking water and wastewater treatment facilities, are exempt from those regulations. This bill would require such facilities to comply with the requirements. The bill also would extend existing mandates on certain public entities that

are not exempt from the current regulations and impose new intergovernmental mandates on entities that are considered to be high risk.

According to government and industry representatives, many of the public facilities potentially affected by the bill's provisions are currently engaged in activities similar to those that would be required under H.R. 5577. Such facilities are acting either in response to the terrorist attacks of September 11, 2001, as a condition of membership with chemical industry associations, or to comply with the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, the Maritime Transportation Security Act, or other federal regulations. Based on information from DHS, CBO expects DHS to assign most public water facilities to the lowest tier of risk and to consider activities that the facilities are currently doing to be sufficient. Assuming public facilities would not be required to undertake significant new activities, CBO expects that those mandates would impose few additional costs on those facilities.

### **Other Intergovernmental Mandates**

The bill also contains two preemptions of state and local authority. It would exempt certain security plans and documents from state and local laws that provide public access to information and preempt any state or local regulation that would conflict with the security activities authorized by this bill. CBO estimates that costs, if any, of those preemptions would be small.

## **ESTIMATED IMPACT ON THE PRIVATE SECTOR**

H.R. 5577 would extend and impose new private-sector mandates, as defined in UMRA, on owners and operators of certain types of chemical facilities. Based on information from industry sources and DHS, CBO expects that the aggregate direct cost of complying with those mandates would likely exceed the annual threshold established in UMRA for private-sector mandates (\$136 million in 2008, adjusted annually for inflation) in at least one of the first five years the mandates are in effect.

### **Extension of Mandates on Chemical Facilities**

The bill would extend and modify certain regulations known as the Chemical Facility Anti-Terrorism Standards (CFATS) that were issued under Public Law 109-295 and are set to expire in October 2009. H.R. 5577 would extend the requirement that DHS maintain a list

of chemical facilities based on criteria in the bill, assign each such facility to one of at least four risk-based tiers, and develop security standards and procedures for facilities on the list.

Based on regulations developed by DHS, owners and operators of those chemical facilities would be required to conduct an assessment of the vulnerability of their facility to a terrorist incident, and prepare and implement a security plan that addresses the results of the vulnerability assessment. The bill also would require the owners and operators of such facilities to maintain a current copy of the assessment and plan at their facility and to allow DHS access to their property for security inspections and verifications. In addition, owners and operators would be required to periodically submit a review of the adequacy of the vulnerability assessment or facility security plan that includes a description of any changes made to the assessment or plan. The bill also would extend certain protections for employees in the event that they submit a report to DHS regarding problems, deficiencies, or vulnerabilities at a chemical facility.

According to industry sources and DHS, most facilities are currently engaged in the assessments and planning that would be required under this bill as a part of complying with the current regulations. The cost to chemical facilities of extending those requirements would depend, in part, on the number of facilities that will have completed their vulnerability assessments and security plans before the sunset of the CFATS regulations. Based on information from DHS and industry sources on the expected schedule of requirements for facilities, CBO expects that the incremental cost to the industry to comply with the extension of the security standards and procedures outlined in the bill would be substantial and would likely exceed the annual threshold established in UMRA in at least one of the first five years those requirements are in effect.

### **New Mandates on Chemical Facilities**

H.R. 5577 also would impose new mandates, as defined in UMRA, on owners and operators of chemical facilities covered under the bill. Those new mandates would not impose substantial costs on those owners and operators.

**Mandates on High-Risk Facilities.** The bill would require owners and operators of high-risk chemical facilities to conduct a specific assessment of methods to reduce the impacts of a terrorist attack on the facility. If the Secretary determines that specific methods are necessary for a facility to reduce those impacts, the owner or operator of the facility would be required to implement such methods. The bill also would require DHS to make funds available to help defray some of the cost of implementing those methods. Because the facilities that would be affected and the types of methods to be required depend on future regulatory actions, CBO cannot estimate the cost of this mandate.

The bill also would require owners and operators of high-risk chemical facilities to:

- Allow DHS to conduct certain risk management exercises (called red team exercises) at their facilities;
- Submit to DHS an addendum to the facility's security vulnerability assessment or site security plan to reflect any additional requirements of this act if they have already submitted an assessment and plan under current regulations; and
- Conduct security background checks of individuals who have access to restricted areas or critical assets.

Based on information from DHS and the industry, CBO expects that the cost of complying with those mandates would not be substantial compared with the annual threshold.

**Training Requirement.** Under the bill, the owner or operator of a chemical facility required to submit a site security plan would be required to annually provide each employee of the facility with a minimum of eight hours of training. The training would include such topics as the identification and discussion of substances that pose a certain level of risk to the workforce, emergency response providers, and the community. According to DHS and industry representatives, all covered chemical facilities currently provide similar training for their employees so that the incremental cost to those facilities should be minimal compared with the annual threshold.

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